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10 UNITED STATES DISTRICT COURT
11 EASTERN DISTRICT OF CALIFORNIA
12

13 PABLO MARQUEZ, p/k/a PABLO
14 STANLEY,

15 Plaintiff,

16 v.

17 WILLIAM MOYNIHAN,

18 Defendant.

19 WILLIAM MOYNIHAN,

20 Counter-Claimant,

21 v.

22 PABLO MARQUEZ, p/k/a PABLO
23 STANLEY,

24 Counter-Defendant.

Case No. 2:22-cv-00123-JAM-KJN

ANSWER TO COMPLAINT FOR
DECLARATORY JUDGMENT AND
COUNTERCLAIMS

1 Defendant William Moynihan (“Moynihan” or “Defendant”) hereby answers the
2 Complaint filed by Plaintiff Pablo Marquez (“Plaintiff” or “Marquez”) as follows. Unless
3 specifically admitted below, Moynihan denies each and every allegation, claim and prayer for
4 relief contained in the Complaint.

5 INTRODUCTION

6 1. Paragraph 1 of the Complaint consists of conclusions of law and no response is
7 required. To the extent a response is required, the allegations are denied.

8 2. Looking for an artist to collaborate on a non-fungible token (“NFT”) project,
9 Moynihan contacted Marquez to form a partnership relating to the creation and sale of NFTs (the
10 “Partnership”). The members of the Partnership consisted of Moynihan, Marquez, and another
11 individual, Zack Tanner (the “Partners”). During the course of the Partnership, Moynihan
12 received a share of the Partnership’s profits, as the Partners had agreed, in the form of the
13 cryptocurrency Ethereum. Moynihan denies all other allegations contained in Paragraph 2 of the
14 Complaint.

15 3. Moynihan admits he received a letter from Marquez’s legal counsel. The content
16 of the letter speaks for itself, and Moynihan denies the characterization of the letter contained in
17 Paragraph 3 of the Complaint.

18 4. Moynihan admits that he sent a letter, through counsel, to Marquez. The content of
19 the letter speaks for itself, and Moynihan denies the characterization of the letter contained in
20 Paragraph 4 of the Complaint and denies any remaining allegations in the paragraph. Moynihan
21 has insufficient knowledge to admit or deny the allegations contained in Footnote 1 of Paragraph
22 4 of the Complaint, and on that basis, denies those allegations.

23 5. Paragraph 5 of the Complaint consists of conclusions of law and no response is
24 required. To the extent a response is required, Moynihan denies the remaining allegations
25 contained in Paragraph 5.

26 JURISDICTION AND VENUE

27 6. Paragraph 6 of the Complaint consists of conclusions of law and no response is
28 required. To the extent a response is required, the allegations are denied.

7. Paragraph 7 of the Complaint consists of conclusions of law and no response is required. To the extent a response is required, the allegations are denied.

8. Moynihan admits he resides in the Eastern District of California. The remaining allegations in Paragraph 8 of the Complaint consists of conclusions of law and no response is required. To the extent any response is required, Moynihan denies the remaining allegations contained in Paragraph 8 of the Complaint.

PARTIES

9. Moynihan has insufficient knowledge to admit or deny the allegations contained in Paragraph 9 of the Complaint, and on that basis, denies those allegations.

10. Moynihan denies that Marquez is the sole creator and designer of the *Robotos Works*. Moynihan has insufficient knowledge to admit or deny the remaining allegations contained in Paragraph 10 of the Complaint, and on that basis, denies those allegations.

11. Moynihan admits he resides in Granite Bay, California.

GENERAL ALLEGATIONS

12. Moynihan contacted Marquez on July 8, 2021 to inquire whether Marquez was connected to the *Meta Bots* NFT project, or if someone was using images from Marquez's *Bottts* library of images. Moynihan has insufficient knowledge to admit or deny the remaining allegations contained in Paragraph 12 of the Complaint, and on that basis denies the allegations.

13. Marquez responded that the *Meta Bots* NFT project was not his. Moynihan—not Marquez—brought up the idea of starting an NFT project with Marquez and thus Moynihan denies all remaining allegations contained in Paragraph 13 of the Complaint.

14. Moynihan admits the allegations contained in Paragraph 14 of the Complaint.

15. Moynihan denies the characterization contained in Paragraph 15 of the Complaint that Marquez began building the *Robotos* NFT project on his own. Moynihan had been working with Marquez leading up to July 10, 2021 in developing the concept, design, and other key aspects of the *Robotos* NFT project. Moynihan has insufficient knowledge to admit or deny the remaining allegations contained in Paragraph 15 of the Complaint, and on that basis denies the allegations.

1 16. On July 11, 2021, with Moynihan’s advice and approval, Marquez made an
2 announcement on the Discord with a link to the Partnership’s *Robotos* notion board. Moynihan
3 has insufficient knowledge to admit or deny the remaining allegations in Paragraph 16 of the
4 Complaint, and on that basis denies the allegations.

5 17. Again with Moynihan’s advice and approval, Marquez drew some sketches of
6 *Robotos* characters on livestreams and shared images of those sketches on Discord.

7 18. Moynihan admits that Marquez and Moynihan continued to communicate
8 regarding the Partnership’s *Robotos* project. The Partnership also decided to set up a Discord
9 channel. However, because Marquez was “new to all this,” he noted that “whatever help”
10 Moynihan—who had significantly more experience than Marquez in this area—could provide in
11 setting up the Discord channel was welcome.

12 19. Marquez and Moynihan agreed to bring another person on board, Zack Tanner, to
13 assist with the *Robotos* project. Marquez and Moynihan also agreed that the Partnership would
14 “split everything three ways” relating to *Robotos* between Marquez, Moynihan and Tanner.
15 Moynihan denies all remaining allegations contained in Paragraph 19 of the Complaint.

16 20. Moynihan denies the allegations contained in Paragraph 20 of the Complaint.

17 21. Moynihan denies the allegations contained in Paragraph 21 of the Complaint.

18 22. Moynihan admits that Marquez created a private Discord group for the
19 Partnership. Moynihan has insufficient knowledge to admit or deny the remaining allegations
20 contained in Paragraph 22 and, on that basis, denies the allegations.

21 23. In the Partnership’s private Discord group, Marquez shared his production board
22 and an incomplete draft of the FAQ for the NFT project. After a multi-hour call in which the
23 Partners discussed each of the Partners’ responsibilities for the NFT project and other details of
24 the partnership, Marquez sent around notes from the call. Moynihan denies all remaining
25 allegations contained in Paragraph 23 of the Complaint.

26 24. Moynihan denies the allegations contained in Paragraph 24 of the Complaint.

27 25. Moynihan denies the allegations contained in Paragraph 25 of the Complaint.

28 26. Moynihan denies the allegations contained in Paragraph 26 of the Complaint.

1 27. Some of Moynihan's many contributions he provided to the Partnership included
2 handling the most difficult coding tasks, such as writing the smart contract and building the Web3
3 application for the NFT project. Moynihan denies the remaining allegations contained in
4 Paragraph 27 of the Complaint.

5 28. Moynihan denies the allegations contained in Paragraph 28 of the Complaint.

6 29. One of Moynihan's many contributions he provided to the Partnership included
7 writing the smart contract for the NFT project, which is an essential component of all NFTs,
8 including the sale and purchase of the NFT. The license included an MIT license. Moynihan
9 denies the remaining allegations contained in Paragraph 29 of the Complaint.

10 30. Moynihan denies that the artwork connected to the *Robotos* project constitutes
11 "Marquez's proprietary artwork." No artwork is contained in the coding script of the smart
12 contracts.

13 31. Moynihan denies the allegations contained in Paragraph 31 of the Complaint.

14 32. Moynihan denies the allegations in Paragraph 32 of the Complaint to the extent the
15 dates of presale and minting of the Partnership's *Robotos* NFT project are incorrect. Moynihan
16 admits the remaining allegations contained in Paragraph 32 of the Complaint.

17 33. Each of the *Robotos* tokens generated is associated with one specific illustration.
18 Moynihan denies the remaining allegations in Paragraph 33.

19 34. Moynihan denies the allegations contained in Paragraph 34 of the Complaint.

20 35. Moynihan denies the allegations contained in Paragraph 35 of the Complaint.

21 36. Moynihan has insufficient information to either confirm or deny the allegations
22 contained in Paragraph 36 of the Complaint, and on that basis denies the allegations.

23 37. Moynihan admits that when consumers bought a *Robotos* token, they received
24 access to related images. The remaining allegations contained in Paragraph 37 consist of legal
25 conclusions to which no response is required. To the extent a response is required, Moynihan
26 denies those allegations.

27 38. The content of the license referred to in Paragraph 38 of the Complaint speaks for
28 itself, and no admission or denial is necessary. To the extent a response is necessary, Moynihan

1 denies any characterization of the license referred to in Paragraph 38 of the Complaint.

2 39. Moynihan denies the allegations contained in Paragraph 39 of the Complaint.

3 40. Moynihan admits that once the tokens were sold at minting, royalties were
4 distributed to a wallet. Moynihan denies the remaining allegations contained in Paragraph 40 of
5 the Complaint.

6 41. Moynihan denies the allegations contained in Paragraph 41 of the Complaint.

7 42. Moynihan denies the allegations contained in Paragraph 42 of the Complaint.

8 43. Moynihan denies the allegations contained in Paragraph 43 of the Complaint.

9 44. Moynihan denies the allegations contained in Paragraph 44 of the Complaint.

10 45. Moynihan denies the allegations contained in Paragraph 45 of the Complaint.

11 46. Moynihan denies the allegations contained in Paragraph 46 of the Complaint.

12 47. Moynihan denies the allegations contained in Paragraph 47 of the Complaint.

13 48. Moynihan admits that he shared a message on the Partnership's *Robotos* Discord
14 channel. The content of that message speaks for itself. Moynihan denies the remaining
15 allegations contained in Paragraph 48 of the Complaint.

16 49. Moynihan admits that he received a portion, but not all, of the royalties he was
17 entitled to as a Partner. Moynihan denies the remaining allegations contained in Paragraph 49 of
18 the Complaint.

19 50. Moynihan admits that Marquez messaged Tanner and Moynihan on August 20,
20 2021. The content of that message speaks for itself. Moynihan denies all remaining allegations
21 contained in Paragraph 50 of the Complaint.

22 51. Moynihan admits that he was removed as a moderator on the *Robotos* Discord
23 server. The content of the messages between Moynihan and Marquez speaks for itself.

24 52. As a Partner, Moynihan was entitled to receive an equal share of royalties from the
25 *Robotos* project. Moynihan received only a partial distribution of those royalties amounting to
26 approximately \$900,000. Moynihan denies all remaining allegations contained in Paragraph 52
27 of the Complaint.

28 53. On November 23, 2021, Marquez wrote to Moynihan regarding royalties. The

1 content of that message speaks for itself.

2 54. Moynihan denies the allegations contained in Paragraph 54 of the Complaint.

3 55. Moynihan admits that he received the letter from Marquez's counsel attached as
4 Exhibit 1 to the Complaint. The content of the letter speaks for itself.

5 56. Moynihan admits that his counsel sent the letter attached as Exhibit 2 to the
6 Complaint. The content of the letter speaks for itself, and Moynihan denies Marquez's
7 characterization of the letter.

8 57. Paragraph 57 of the Complaint consists of conclusions of law and no response is
9 required. To the extent a response is required, the allegations are denied.

10 58. Paragraph 58 of the Complaint consists of conclusions of law and no response is
11 required. To the extent a response is required, the allegations are denied.

12 **FIRST CLAIM FOR RELIEF**

13 Moynihan incorporates all admissions and denials to each allegation contained in
14 Paragraphs 1 through 58 of the above.

15 59. Moynihan denies the allegations contained in Paragraph 59 of the Complaint.

16 60. Moynihan denies the allegations contained in Paragraph 60 of the Complaint.

17 61. Moynihan denies the allegations contained in Paragraph 61 of the Complaint.

18 62. Moynihan denies the allegations contained in Paragraph 62 of the Complaint.

19 63. Paragraph 63 of the Complaint consists of conclusions of law and no response is
20 required. To the extent a response is required, the allegations are denied.

21 64. Moynihan denies the allegations contained in Paragraph 64 of the Complaint.

22 65. Moynihan has insufficient knowledge to either admit or deny the allegations
23 contained in Paragraph 65 and, on that basis, denies them.

24 66. Paragraph 66 of the Complaint consists of conclusions of law and no response is
25 required. To the extent a response is required, the allegations are denied.

26 67. Paragraph 67 of the Complaint consists of conclusions of law and no response is
27 required. To the extent a response is required, the allegations are denied.

28 **SECOND CLAIM FOR RELIEF**

1 Moynihan incorporates all admissions and denials to each allegation contained in
2 Paragraphs 1 through 67 of the above.

3 68. Paragraph 68 of the Complaint consists of conclusions of law and no response is
4 required. To the extent a response is required, the allegations are denied.

5 69. Moynihan denies the allegations contained in Paragraph 69 of the Complaint.

6 70. Moynihan denies the allegations contained in Paragraph 70 of the Complaint.

7 71. Moynihan denies the allegations contained in Paragraph 71 of the Complaint.

8 72. Moynihan denies the allegations contained in Paragraph 72 of the Complaint.

9 73. Moynihan denies the allegations contained in Paragraph 73 of the Complaint.

10 74. Moynihan denies the allegations contained in Paragraph 74 of the Complaint.

11 75. Moynihan admits that the *Robotos* NFT project is a partnership, that he is a partner
12 in the partnership, and he is entitled to continued royalties from the project. Moynihan denies all
13 remaining allegations contained in Paragraph 75 of the Complaint.

14 76. Moynihan has informed Marquez that he may need to initiate litigation in
15 connection with, in part, unpaid royalties Moynihan is entitled to that are being withheld by
16 Marquez. Moynihan denies all remaining allegations contained in Paragraph 76.

17 77. Paragraph 77 of the Complaint consists of conclusions of law and no response is
18 required. To the extent a response is required, the allegations are denied.

19 **PRAYER FOR RELIEF**

20 Moynihan denies that Marquez is entitled to the relief requested.

21
22 **AFFIRMATIVE DEFENSES**

23 **FIRST AFFIRMATIVE DEFENSE**

24 **(Failure to State Facts Sufficient to Constitute a Cause of Action)**

25 The Complaint, and each and every cause of action alleged therein, fails to state facts that,
26 if proven, are sufficient to constitute a cause of action upon which the requested relief may be
27 granted against Defendant.

28 **SECOND AFFIRMATIVE DEFENSE**

(Unclean Hands)

The Complaint, and each and every cause of action alleged therein, is barred by the doctrine of unclean hands.

THIRD AFFIRMATIVE DEFENSE

(Estoppel)

The Complaint, and each and every purported cause of action alleged therein, is barred by the doctrine of estoppel due to Plaintiffs' own acts or omissions.

FOURTH AFFIRMATIVE DEFENSE

(Waiver)

The Complaint, and each and every purported cause of action alleged therein, is barred by the doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE

(Failure to Name Indispensable Parties)

Plaintiff has failed to join an indispensable party to this action: Zack Tanner. The Partnership was formed by three Partners, Moynihan, Marquez and Tanner. Plaintiff's requested relief, finding that no partnership was formed, would potentially impair the interests of Tanner.

SIXTH AFFIRMATIVE DEFENSE

(Attorney Fees Are Not Recoverable)

Attorney's fees are not recoverable for the claims asserted in the Complaint.

DEFENDANT'S COUNTERCLAIMS

Counter-Claimant William Moynihan (“Moynihan” or “Counter-Claimant”) hereby brings counterclaims and alleges as follows:

I. INTRODUCTION

1. Moynihan has twenty-years of experience as a graphic designer, web designer, user interface (“UI”) and user experience (“UX”) designer, software engineer and entrepreneur. Through his career, he has worked closely at the forefront of technology and has founded several successful startups.

2. In 2017, Moynihan began researching, investing in and working on various projects related to cryptocurrency. Recognizing the quickly rising value of the emerging market of non-fungible tokens (“NFTs”), Moynihan created and launched his own collection of NFTs: *CryptoBros HODL Gang*. Around this time, Moynihan spent significant time researching the NFT market, interacting with the NFT community, and promoting his *CryptoBros HOLD Gang* NFT collection.

3. Taking what he learned from the launch of his first NFT project, Moynihan began searching for a partner to launch a new NFT project.

4. In July 2021, Moynihan identified promising artwork and contacted the artist of the work, Defendant Pablo Marquez (“Marquez”) to see if he was interested in working together to launch an NFT project.

5. Thereafter, Moynihan and Marquez formed a partnership (the “Partnership”) and worked closely together for several weeks developing and launching a new NFT project (the “*Robotos* NFT Project”).

6. At Marquez’s suggestion, Moynihan and Marquez brought on a third partner, Zack Tanner (collectively, the “Partners”). As part of the agreement for bringing in Tanner as a partner, Marquez, Tanner and Moynihan agreed “to split everything three ways” between the Partners.

7. Each Partner made significant contributions to the *Robotos* NFT Project and the project was a wild success. The *Robotos* NFT Project has gone on to bring in hundreds of

1 thousands of dollars in royalties to the Partnership, with the most valuable *Robotos* NFTs selling
2 for nearly \$100,000 *each*.

3 8. Despite this rampant success (or because of it), Marquez wrongfully shut out
4 Moynihan from the Partnership, is withholding royalties paid to the Partnership and owed to
5 Moynihan, and is claiming sole ownership of the assets of the Partnership including the *Robotos*.

6 9. As a partner in the Partnership, Moynihan is a one-third co-owner of the assets of
7 the Partnership, including the intellectual property rights to the *Robotos*, and all profits or
8 royalties accrued. In order to protect these rights and recover what is owed to him, Moynihan
9 seeks declaratory judgment and asserts claims of breach of the partnership agreement, breach of
10 the implied partnership agreement, breach of fiduciary duty, and unjust enrichment. And to
11 determine the value of the assets of the Partnership and amount owed to Moynihan, he demands
12 an accounting.

13 II. THE PARTIES

14 10. Counter-Claimant William Moynihan is an individual residing in Granite Bay,
15 California. Moynihan has been a graphic designer, web designer, UI/UX designer, software
16 engineer and entrepreneur for over twenty years. He has found success in numerous startup
17 companies. One such example includes founding a home design social network, RoomReveal,
18 which Moynihan designed and raised significant capital for through angel investors before the
19 company was successfully acquired in 2014. Moynihan has significant experience in design and
20 marketing with a Bachelor of Arts in marketing from Florida Atlantic University, and through his
21 work as a user interface and experience designer for the last two decades. Moynihan also has
22 significant experience in the cryptocurrency market, including in the NFT market.

23 11. Counter-Defendant Pablo Marquez is an individual who, upon information and
24 belief, resides in Mexico City, Mexico. On information and belief, prior to the *Robotos* NFT
25 Project, Marquez had limited to no experience in the NFT market and had never produced or
26 launched an NFT collection.

27 III. JURISDICTION AND VENUE

28 12. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §

1 1332(a)(1). Moynihan is an individual residing in Granite Bay, California. Marquez is an
 2 individual who, upon information and belief, resides in Mexico City, Mexico. The amount in
 3 controversy exceeds \$75,000, exclusive of interests and costs.

4 13. This Court separately has subject matter jurisdiction over this matter pursuant to
 5 28 U.S.C. § 1367(a) because Moynihan's counterclaims arise out of the same transaction or
 6 occurrence as Marquez's claims.

7 14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b)(2) because a
 8 substantial part of the events or omissions giving rise to this action have occurred and/or will
 9 occur in this District.

10 IV. GENERAL ALLEGATIONS

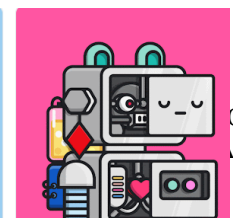
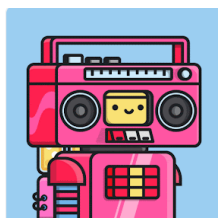
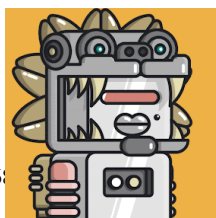
11 A. Moynihan, Marquez and Tanner form a Partnership

12 15. In or around April 2021, Moynihan began to research and prepare plans to enter
 13 the NFT market. Moynihan created artwork and the underlying code necessary for a new NFT
 14 project titled *CryptoBros HODL Gang*. He began interacting with the NFT community to
 15 promote the new project.

16 16. The process of creating and launching the *CryptoBros HODL Gang* NFT project,
 17 helped Moynihan refine his plan for successfully launching and marketing NFTs. Once he had
 18 refined that plan, Moynihan began looking for an artist to partner with on an NFT project.

19 17. One key aspect of Moynihan's plan for his next NFT project was to create a
 20 generative profile picture ("PFP") NFT. PFP NFTs generally focus on the torso and head of
 21 characters. While each PFP character maintains the same high-level design, they are
 22 distinguished from each other through varying attributes (such as hats, eyes, mouths, torsos, etc.)
 23 that can be easily combined to create new, exciting characters.

24 18. During the creation of generative PFP art, a script combines different styles of
 25 those attributes to create unique characters. Examples of this generative PFP art style can be seen
 26 in the below Robotos NFTs.



ORY
IMS

19. Moynihan spent considerable time researching the characteristics of successful PFP NFTs to create characters which excite the NFT community, how to effectively market the NFTs, and how best to grow an NFT community. Because the value of an NFT is determined by the NFT community members, each of those aspects is integral to the success of an NFT project.

20. On June 8, 2021, Moynihan discovered a collection of NFTs called *Meta Bots*. After doing some research, Moynihan found that the artwork used for the *Meta Bots* NFTs appeared to be from an open-source art library called *Bottts*, attributed to Marquez as the artist.

21. That same day, Moynihan sent Marquez a message through Twitter inquiring whether he was behind the *Meta Bots* NFT project, or if someone was using his work. The next day, Marquez confirmed to Moynihan that he was not connected to the *Meta Bots* NFT project.

22. In that same conversation, Moynihan suggested that Marquez should launch an NFT project. Marquez, apparently with little knowledge of how NFTs operated, asked Moynihan how he would go about creating an NFT project. With his experience in recently launching his own NFT project, Moynihan began providing Marquez advice on how to launch an NFT project.

23. Marquez then sent Moynihan a message showing new artwork Marquez was working on consisting of black and white animal-like characters titled *The Techies*.



24. Recognizing the significant changes to become a successful PFP-style NFT project, Moynihan set up a call with Marquez to discuss the potential of starting an NFT project together and to advise him on how the artwork would need to be changed. During that call, Moynihan expressed his concerns with turning *The Techies* into

1 NFTs, asking if Marquez would be able to change the characters into a PFP style. Moynihan
 2 suggested, for instance, that Marquez focus on the torso and head of the character and add color.
 3 Marquez was resistant to Moynihan's advice to focus on the PFP style, but said he would think
 4 about it.

5 25. The next day, July 10, 2021, Marquez texted Moynihan asking to discuss their
 6 NFT project further. In those texts to Moynihan, Marquez suggested that "we create a totally new
 7 bots collection" for their NFT project. He also noted these new characters would be in color, as
 8 Moynihan had suggested. Ultimately, following Moynihan's advice to focus on a PFP style of
 9 art, and to incorporate color, Moynihan and Marquez began creating the *Robotos* characters.

10 26. Throughout his conversations with Moynihan, Marquez made clear that he
 11 believed Moynihan and Marquez were working on the *Robotos* NFT Project together and both
 12 had equal say and control in the project.

13 27. For instance, on July 11, 2021, Marquez asked Moynihan if he "would be open to
 14 the idea" of bringing in another member to the Partnership. Marquez suggested they add Zack
 15 Tanner to the team. Tanner was a cofounder with Marquez of another company, Blush.
 16 Moynihan responded that he would consider it, and would let Marquez know if he agreed to bring
 17 another partner on board. The decision to bring Tanner onboard could not be made without
 18 Moynihan's agreement.

19 28. As part of Marquez's ask to add Tanner to the team, also on July 11, 2021,
 20 Marquez told Moynihan that the three of them—Marquez, Moynihan and Tanner—could split
 21 everything associated with the *Robotos* NFT Project three ways.



pablostanley 07/11/2021

si si si

Dude, I'm new to all this, so whatever help would be awesome!

Have you given any thought about getting some help from another dev?

All of this requires a lot of work, not just on the art and dev, but also on community.

So, getting another person on board would allow us to do more stuff 😊

I would be down to split everything three ways.

(I haven't told my friend anything, btw)

His name is Zack Tanner. He's fullstack. I trust him with my life. He's one of my cofounders at Blush.

Here's his LinkedIn: <https://www.linkedin.com/in/ztanner/>

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2
3
4
5 29. Shortly after, Moynihan, Marquez and Tanner had a conference call to formally
6 discuss forming a partnership for the *Robotos* NFT Project with the three of them as partners. On
7 that call, the three confirmed Marquez's offer and they agreed that each of them would be an
8 equal partner and split everything—including losses and profits—evenly.

9 30. On that call and in later discussions, the Partners specifically discussed how to
10 split royalties from sales of the *Robotos* NFTs. The Partners agreed to split those royalties evenly
11 between the three Partners—the same agreement they reached regarding everything else owned
12 by the Partnership.

13 **B. Creating the *Robotos* NFT Collection**

14 31. The three Partners worked closely on getting the *Robotos* NFT Project ready to be
15 minted. Each Partner agreed to take on different tasks based on the skills and expertise they
16 brought to the Partnership. After a call with the Partners in which they outlined and agreed to
17 those obligations, Marquez sent around notes from the call of what the Partners discussed,
18 including some of the responsibilities each Partner had agreed to take on. After readying the
19 *Robotos* NFTs, the Partners planned to sell the NFTs through the *Robotos* website using the
20 Web3 app Moynihan developed.

21 32. Moynihan agreed to take up the most difficult coding tasks: writing the smart
22 contract associated with the tokens and building the Web3 application which served as the
23 primary point-of-sale for the tokens.

24 33. A smart contract is a self-executing contract with the terms of the agreement
25 between the buyer and seller being written into lines of code. The smart contract controls and
26 tracks all transactions involving NFTs. The smart contract is a key component of any NFT,
27 necessary to transfer the NFT and to verify the owner of the NFT. It also serves to connect the
28 NFT (which the consumer owns) to the image of the NFT, meaning without the smart contract,

1 the NFT would have no metadata associated with it and thus, no image. In other words, without
2 the smart contract, there is no NFT.

3 34. Additionally, because the smart contract is an essential component of all sales, it
4 directly correlates to the generation of royalties from future sales of the tokens.

5 35. Smart contracts are owned by an “Ethereum wallet,” a digital wallet which allows
6 the owner of the wallet to control the functions of the smart contract.

7 36. In deploying the smart contract, Moynihan’s personal Ethereum wallet was
8 connected to and controlled the smart contract. As such, initially, Moynihan was the only person
9 with the ability to execute the functions of the smart contract.

10 37. Soon after deploying the smart contract, Moynihan executed a function to transfer
11 ownership of the contract to a “multi-signature wallet” (the “Partnership’s Wallet”), i.e., a wallet
12 which requires two or more private keys to execute any transactions. Moynihan made each
13 Partner an equal owner of this multi-signature wallet and he assigned equal control of the wallet
14 to each Partner. This means that instead of Moynihan having unilateral control of the functions of
15 the smart contract—for instance being able to start and stop the minting of tokens, set the minting
16 price, or withdraw funds—all three Partners are required to sign an electronic order before the
17 smart contract will execute any function.

18 38. The Partnership’s Wallet is still the owner of the smart contract. Thus, Moynihan’s
19 agreement, along with the other two Partners, is necessary to issue any orders through the smart
20 contract. For instance, if the third-party service which hosts the metadata for the NFTs (which is
21 how the image is connected to each NFT) went down, the agreement of all three Partners would
22 be necessary to reconnect the metadata, and thus the image, to the NFT.

23 39. Because the Partnership’s Wallet owns the smart contract, it was designated as the
24 default owner of the *Robotos* NFT collection on OpenSea (a popular NFT marketplace). This
25 meant that the royalty settings, by default, were controlled by the Partnership’s Wallet. After
26 royalties were received by the Partnership’s Wallet, the agreement of all three Partners was
27 required to distribute royalties to each Partner’s personal wallet.

28 40. In or around August 2, 2021, Moynihan updated the settings of the *Robotos* NFT

1 collection on OpenSea to set royalties at 4% and designate the distribution of royalties to the
2 Partnership's Wallet address. Thus, anytime a *Robotos* NFT was sold on OpenSea, 4% of the sale
3 price was automatically distributed to the Partnership's Wallet.

4 41. Moynihan also added a personal Ethereum wallet of each Partner to the *Robotos*
5 OpenSea account as "collaborators." This allowed any of the three Partners to more easily
6 manage the *Robotos* NFT collection settings, such as marketing images and text, on OpenSea.

7 42. In addition to creating the smart contract, Moynihan was also responsible for
8 researching the NFT market, advising the Partnership regarding the best routes for success in the
9 NFT market, building the web app, and setting up and managing the Discord server for the
10 *Robotos* community and other marketing efforts.

11 43. Tanner was primarily responsible for writing the script that controlled the
12 automatic generation of the unique artwork for the NFTs. That script controlled how different
13 styles of attributes were combined and the rarity of different styles. Moynihan, who had prior
14 experience from his *CryptoBros HODL Gang* NFT collection in writing these scripts, also offered
15 significant help and guidance to Tanner relating to the logic behind this script.

16 44. Marquez's core responsibilities included creating artwork for the tokens, as well as
17 promoting and marketing the tokens.

18 45. As he did with Tanner's responsibilities for the Partnership, Moynihan also
19 provided significant assistance and advice to Marquez regarding his responsibilities. For
20 instance, Moynihan provided guidance to Marquez on the design of the artwork for the *Robotos*
21 characters. Specifically, Moynihan advised Marquez that they should make all the tokens
22 animated gifs, which would create more unique and desirable characters. The Partnership
23 decided to proceed with Moynihan's advice, and the animated gif style of the *Robotos* NFTs
24 became a key distinguishing element of the collection. Moynihan also instructed Marquez that
25 the *Robotos* characters should be made in a PFP-style, focusing on the torso-up and using color.
26 Marquez followed Moynihan's advice and the *Robotos* characters incorporated those suggestions.

27 46. Each of the Partners also contributed to the Partnership by making various
28 payments to fund the Partnership's project. For instance, Moynihan paid the costs to set up the

1 Partnership's Wallet, the cost of upgrading the Web3 node, and contributed to the costs of
2 deploying the smart contract.

3 **C. Sale of the *Robotos* NFT Collection**

4 47. On August 2, 2021, the Partnership was ready to begin a small pre-sale of 900
5 *Robotos* tokens and then begin the sale of the remaining 9,099 tokens the next day. The pre-sale
6 went off without a hitch and was an instant success. The 900 tokens sold out in just seventeen
7 minutes.

8 48. That evening, Moynihan discovered a minor bug in the smart contract. The bug
9 would only affect the sale of the last token by preventing that token from being minted unless the
10 transaction was initiated by the contract's owner wallet address. In other words, even with the bug
11 in the smart contract, there would be no issues in selling the first 9,998 of the 9,999 tokens.

12 49. In order to avoid this bug, Moynihan implemented a fix in the *Robotos* web app
13 that would show that the collection was "Sold Out" once the 9,998th token was sold, preventing
14 anyone from attempting to purchase the 9,999th token (which was the only token affected by the
15 bug). The Partnership could then buy the last token and avoid any issues with the last token.

16 50. The next day, August 3, was the date of the planned sale of the *Robotos* collection.
17 That morning, the Partners discussed the last token bug. While Tanner and Marquez suggested
18 the Partnership may want to delay the minting of the tokens, the Partnership decided to proceed
19 with the minting.

20 51. Once the main sale began, it became instantly clear *Robotos* was an enormous
21 success. Over 600 *Robotos* tokens were being minted *every minute* during the main sale.

22 52. Because of this enormous demand, the *Robotos* web app was operating slowly due
23 to a high level of web traffic.

24 53. On information and belief, Marquez mistakenly believed that the lag in the web
25 app was related to the last token bug, when in reality it was due to the heavy web traffic due to
26 the immense popularity of the NFT collection. Marquez panicked and asked Tanner and
27 Moynihan to pause the sale. In order to do so, each Partner would need to agree and sign an order
28 under the smart contract to pause the sale.

1 54. While Moynihan voted against pausing the sale, noting it could cause many people
2 to lose money on failed transactions, Tanner voted with Marquez. Outvoted by the two other
3 Partners, Moynihan agreed to sign the order under the smart contract to pause the sale.

4 55. When the sale was paused, only roughly 150 of the 9,999 tokens were left
5 unminted. Approximately 300 transactions failed because of the pause. After Marquez calmed
6 down from his initial panic, the Partners agreed to restart the sale and allowed the remaining
7 *Robotos* to be minted.

8 56. As planned, once the 9,998th *Robotos* was minted, the Partners successfully
9 minted the 9,999th token. The minor bug in the smart contract ended up being a complete non-
10 issue.

11 **D. Marquez Attempts to Push Moynihan Out of the Partnership**

12 57. The day after the main sale of the *Robotos*, August 4, Moynihan discovered that he
13 no longer had access to the *Robotos* Discord channel. More concerning, Moynihan discovered
14 that his personal Ethereum wallet had been removed as a collaborator from the *Robotos* OpenSea
15 account, and that the Partnership's Wallet had been removed as the account owner. That meant
16 Moynihan could no longer access or change the settings of the *Robotos* OpenSea account.

17 58. Moynihan quickly started a call with Marquez regarding these issues. During that
18 call Moynihan inquired as to why his wallet had been removed from the *Robotos* OpenSea
19 account, and why the Partnership's Wallet was removed as the account owner. Marquez claimed
20 he was unable to access the account settings from his own wallet and so had assumed that
21 Moynihan had "hijacked" the account. Moynihan had done no such thing.

22 59. Marquez admitted he contacted OpenSea and accused Moynihan of hijacking the
23 account, requesting that they remove Moynihan's wallet and the Partnership's Wallet.

24 60. On information and belief, based on Marquez's (false) accusations, OpenSea
25 complied with his requests and removed the Partnership's Wallet.

26 61. On information and belief, either Marquez removed Moynihan's personal wallet
27 from the Open Sea account, or based on Marquez's (false) accusations, OpenSea complied with
28 his requests and removed Moynihan's personal wallet from the account.

1 62. When Moynihan asked Marquez why Marquez had not simply called him to check
2 if Moynihan had “hijacked” the account, Marquez claimed to have “forgotten” he had
3 Moynihan’s phone number—*despite that the two had been in continuous contact for the last*
4 *several weeks.*

5 63. On information and belief, Marquez knowingly misled the representatives of
6 OpenSea in order to remove Moynihan’s wallet and the Partnership’s Wallet from the *Robotos*
7 account without Moynihan’s authorization.

8 64. Ultimately, Marquez informed Moynihan that now that the *Robotos* were all
9 minted and sold, he did not want Moynihan to be on the *Robotos* project anymore. Moynihan
10 reminded Marquez that he did not work for Marquez, and they were a partnership.

11 65. On that same call, Marquez ultimately agreed that Moynihan owned a one-third
12 stake in *Robotos*. However, Marquez still asked that Moynihan step down as a developer from
13 the team, but assured Moynihan that he would remain a one-third owner of the project, and
14 continue to receive his third of the royalties.

15 66. Based on Marquez’s assurances that Moynihan would remain a one-third partner,
16 and would add the Partnership’s Wallet back to the OpenSea account again, Moynihan agreed to
17 step down as a developer only.

18 67. After the call, Marquez set up a monthly recurring meeting with the Partners for
19 disbursement of royalties from the resale of the *Robotos* tokens.

20 68. On or around September 8, 2021, Moynihan discovered that the *Robotos* collection
21 was listed on another NFT marketplace, Nifty Gateway. Neither Tanner nor Marquez ever
22 informed Moynihan that *Robotos* were being sold on Nifty Gateway, and Moynihan never
23 received his share of the royalties for these sales.

24 69. On information and belief, the *Robotos* sales on Nifty Gateway total nearly
25 \$1,000,000 and Marquez has withheld the royalties owed to Moynihan for these sales.

26 70. Then, on November 23, 2021, Marquez informed Moynihan that Marquez
27 intended to reduce the amount of royalties paid to the Partners from 4% to 3%. Marquez then
28 once again removed the Partnership’s Wallet from the OpenSea account, completely locking

1 Moynihan out from accessing the account.

2 71. Over the next several days, the Partners discussed the royalties owed to Moynihan.
3 On November 27, 2021, Tanner indicated that he and Marquez would agree to send Moynihan the
4 one-third of royalty payments owed to Moynihan from sales on OpenSea. However, on
5 information and belief, Marquez refused to pay Moynihan his full share of royalties from sales of
6 *Robotos* made on Nifty Gateway.

7 72. When Moynihan again inquired regarding the royalties from the Nifty Gateway
8 sales, Tanner and Marquez stopped responding to Moynihan. Days later, Marquez's attorney
9 informed Moynihan that Marquez would stop distributing Moynihan the royalties he was entitled
10 to. Marquez followed through with his threat and has since withheld the royalties owed to
11 Moynihan and has wrongfully locked Moynihan out from managing the Partnership or accessing
12 any financial information of the Partnership.

13 **First Claim for Relief**

14 **Breach of Partnership/Joint Venture Agreement**

15 73. Moynihan incorporates and each and every allegation contained in Paragraphs 1-
16 72 above, as if alleged herein.

17 74. In July 2021, Moynihan, Marquez, and Tanner entered into a valid partly oral,
18 partly written joint venture/partnership agreement to form a company focused on creating and
19 selling an NFT collection.

20 75. As part of that agreement, Moynihan was granted an ownership interest in the joint
21 venture/partnership and the right to manage and conduct the joint venture/partnership's business.
22 Moynihan, Marquez and Tanner also agreed to share the profits and losses of the joint
23 venture/partnership.

24 76. Moynihan complied with all of his contractual obligations under the joint
25 venture/partnership agreement.

26 77. Marquez materially breached this joint venture/partnership agreement by, among
27 other things, repudiating the existence of the joint venture/partnership; depriving Moynihan of his
28 ownership shares in the joint venture/partnership and the past, present, and future proceeds

therefrom; failing to include and/or disburse proceeds to Moynihan in other *Robotos* projects such as the *Robotos* animated TV show being developed by Time Studios, other related *Robotos*-based NFT collections (*e.g.*, *Robopets*, *Robotos Original*, etc.), and merchandising relating to *Robotos*; and obstructing Moynihan's right to manage and conduct the joint venture/partnership's business.

78. As a result of Marquez's breaches of the agreement, Moynihan has suffered damages in an amount to be established at trial.

Second Claim for Relief

Breach of Implied Partnership/Joint Venture Agreement

79. Moynihan incorporates and each and every allegation contained in Paragraphs 1-78 above, as if alleged herein.

80. Marquez and Tanner entered into an implied-in-fact joint venture/partnership agreement with Moynihan, as shown by their course of conduct, to form a partnership/joint venture focused on producing and selling an NFT collection, and to share in the profits and losses of the partnership/joint venture.

81. By working with Moynihan to launch the successful *Robotos* NFT Project, including through Moynihan's essential work in writing the *Robotos* smart contract, Tanner and Marquez manifested the intent to form and operate a joint venture/partnership with Moynihan. Marquez and Tanner were aware that Moynihan performed these and other acts in furtherance of the joint venture/partnership in expectation of joint ownership, control, and profits.

82. Moynihan performed all of his contractual obligations in accordance with his agreement with Tanner and Marquez.

83. Marquez materially breached this joint venture/partnership agreement by, among other things, repudiating the existence of the joint venture/partnership; depriving Moynihan of his ownership shares in the joint venture/partnership and the past, present, and future proceeds therefrom; failing to include and/or disburse proceeds to Moynihan in other *Robotos* projects such as the *Robotos* animated TV show being developed by Time Studios, other related *Robotos*-based NFT collections (*e.g.*, *Robopets*, *Robotos Original*, etc.), and merchandising relating to *Robotos*; and obstructing Moynihan's right to manage and conduct the joint venture/partnership's business.

84. As a result of Marquez's breaches of this agreement, Moynihan has suffered damages in an amount to be established at trial.

Third Claim for Relief

Breach of Joint Venturer/Partner Fiduciary Duties

85. Moynihan incorporates each and every allegation contained in Paragraphs 1-84 above, as if alleged herein.

86. In or around July 2021, Moynihan, Marquez and Tanner entered into a joint venture/partnership focused on creating and selling an NFT collection. Moynihan, Marquez and Tanner agreed that they would be joint venturers/partners in this endeavor.

87. As joint venturers/partners, Marquez owed Moynihan the fiduciary duties of loyalty, care, disclosure, and good faith and fair dealing and all times. Pursuant to such fiduciary duties, Marquez was required to act with the utmost good faith towards Moynihan and to avoid acts and omissions adverse to Moynihan.

88. Marquez breached his fiduciary duties to Moynihan, including the duties of loyalty, care, disclosure, and good faith and fair dealing, by engaging in the acts and omissions alleged herein. Such acts and omissions include, but are not limited to, unilaterally reducing Moynihan's royalty shares to benefit themselves, withholding the royalty payments Moynihan is entitled to, unilaterally removing Moynihan's access to the *Robotos* Discord channel, unilaterally removing Moynihan's wallet and the Partnership's Wallet from the *Robotos* OpenSea account, and obstructing Moynihan's right to manage and conduct the joint venture/partnership's business.

89. As a direct and proximate result of these breaches, Moynihan has and will sustain damages in an amount to be proven at trial.

Fourth Claim for Relief

Unjust Enrichment

90. Moynihan incorporates each and every allegation contained in Paragraphs 1-89 above, as if alleged herein.

91. By engaging in the conduct described herein, including by withholding royalty payments Moynihan is entitled to, Marquez enriched himself to the detriment of Moynihan.

92. Moynihan invested significant time and effort in working in connection with the *Robotos* NFT Project, including by drafting the smart contract for the *Robotos* NFT, assisting with the design of the *Robotos* artwork, and marketing the *Robotos* project.

93. Moynihan's work was integral to the success of the *Robotos* NFT Project, without which it would not have been minted at all.

94. Moynihan's work created and continues to create significant revenue in the form of royalties from the sale and resale of the *Robotos* NFT. Marquez is withholding these royalties and has thus been unjustly enriched by accepting Moynihan's work without fully compensating him.

95. Additionally, on information and belief, Marquez has been unjustly enriched by receiving compensation, other revenue or benefit in connection with the *Robotos* project and associated projects, including but not limited to the animated *Robotos* TV show being developed by Time Studios, other related *Robotos*-based NFT collections (*e.g., Robopets, Robotos Original*, etc.), and merchandising relating to *Robotos*, and failing to fully compensate Moynihan for the essential work he performed in connection with *Robotos*.

96. Moynihan seeks damages for this unjust enrichment in an amount to be proven at trial.

Fifth Claim for Relief

Accounting

97. Moynihan incorporates each and every allegation contained in Paragraphs 1-96 above, as if alleged herein.

98. In or around July 2021, Moynihan, Marquez and Tanner entered into a joint venture/partnership focused on creating and selling an NFT collection. Moynihan, Marquez and Tanner agreed that they would be joint venturers/partners in this endeavor.

99. Under the joint venture/partnership agreement, Moynihan is a one-third owner of all assets and property of the joint venture/partnership, and is entitled to one-third of the royalties generated by the *Robotos* NFTs.

100. Marquez has refused to allow actively obstructed Moynihan access the finances

1 relating to the joint venture/partnership, making it impossible for Moynihan to determine the
2 assets of the joint venture/partnership and amounts owed to Moynihan.

3 101. Moynihan requests an accounting to determine the assets of the joint
4 venture/partnership and amounts owed to Moynihan.

5 **Sixth Claim for Relief**

6 **Declaratory Judgment (Cal. Code Civ Proc. § 1060)**

7 102. Moynihan incorporates each and every allegation contained in Paragraphs 1-101
8 above, as if alleged herein.

9 103. Moynihan and Marquez intended to and did enter into a partnership/joint venture
10 in connection with the creation of the *Robotos* NFT collection and all related works and projects.

11 104. Moynihan and Marquez also agreed to a partially written, partially oral partnership
12 /joint venture agreement to govern the partnership/joint venture.

13 105. In connection with the partnership/joint venture, Moynihan and Marquez agreed to
14 evenly split revenues and losses, and had equal control of the partnership/joint venture. Both
15 parties also made monetary expenditures in connection with furthering the goals of the
16 partnership/joint venture.

17 106. Despite the clear agreement otherwise, Marquez has repudiated the existence of
18 any partnership/joint venture with Moynihan.

19 107. An actual controversy exists between Marquez and Moynihan as to whether they
20 formed a partnership/joint venture in connection with the *Robotos* project.

21 108. Accordingly, Moynihan is entitled to a declaratory judgment that the *Robotos*
22 project and all derivative projects were a partnership/joint venture of which Moynihan is a one-
23 third owner.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Counter-Claimant pray for judgment against Counter-Defendant as
26 follows:

27 1. For an award of restitution and damages, compensatory, statutory, punitive
28 damages and all other damages permitted by law in excess of \$75,000, the exact amount

1 of which has yet to be ascertained;

2 2. For interest to the extent permitted by law;

3 3. For attorneys' fees and costs expended in the litigation of this action to the full
4 extent permitted by law;

5 4. For an accounting to determine the assets of the joint venture/partnership and
6 amounts owed to Counter-Claimant;

7 5. For a declaration that Moynihan and Marquez entered into a partnership/joint
8 venture in connection with the *Robotos* project and any derivative projects, of which
9 Moynihan is a one-third owner; and

10 6. For such other and further relief as this Court deems appropriate.

11 **Demand for Jury Trial**

12 Pursuant to Federal Rule of Civil Procedure 38(b), Counter-Claimant hereby demands a
13 jury trial for all issues properly triable to a jury in this lawsuit.

14 Dated: February 16, 2022

15 By: /s/ Britt L. Anderson

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